

Letter re Deadline for Completion of Document Production and Privilege Logs

April 24, 2013

VIA ELECTRONIC MAIL

The Honorable Denise L. Cote
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1610
New York, NY 10007-1312

Re: FHFA Actions

Dear Judge Cote:

On behalf of Plaintiff the Federal Housing Finance Authority (“FHFA”), we write to provide a status report concerning document production and request that the Court enter an order requiring Defendants in all of the FHFA Actions to complete their final production of documents for all custodians, and their privilege logs by May 31, 2013. FHFA agrees to meet these deadlines for its own productions.

FHFA initially asked all Defendants to agree to complete both document and privilege log productions by May 15, 2013. Only the Nomura and First Horizon Defendants were willing to agree to that date. JPMorgan and Credit Suisse counter-proposed a later date of May 31, 2013. In addition, JPMorgan agreed to complete production for all noticed witnesses by May 3, 2013. The remaining Defendants either refused the proposal entirely or simply did not respond,¹ and no other Defendant proposed an alternative date by which they would complete document production and privilege logs.² In fact, UBS responded that it would not commit to *any* production or privilege log deadline, stating that “[w]e are not in a position to commit to a completion date at this time and ... do not believe that such completion dates are the proper subject of a ‘compromise proposal’ between the parties.”

In light of the responses from Defendants, FHFA requests that UBS be ordered to complete production for all noticed witnesses by May 3, and that all Defendants be ordered to complete all document production by May 31, 2013 to avoid further postponements of depositions in these Actions and to enable the parties to meet the pretrial schedule.

¹ In addition to the UBS Defendants, the Barclays, Bank of America, Merrill Lynch, Citigroup, Deutsche Bank, Goldman Sachs, HSBC, and Ally Securities Defendants rejected FHFA’s proposal, while the Societe Generale, Ally Financial, GMAC Mortgage Group and RBS Defendants did not respond. Morgan Stanley has represented that it will use its best efforts to complete all productions on or before May 20.

² The Barclays and Citigroup Defendants stated that they would “substantially complete” their document productions by May 15, 2013, a meaningless offer given that (i) FHFA’s proposal is for *final*, not substantial, completion and (ii) all parties were obligated under the Court’s scheduling order to substantially complete production by October 22, 2012.

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Postponements of depositions have become routine due to delays in the production of responsive Witness Documents³ by Defendants UBS and JPMorgan.⁴ Since December 20, 2012, FHFA has noticed nineteen depositions of JPMorgan witnesses and fourteen depositions of UBS witnesses. To date, FHFA has been able to conduct depositions of only three JPMorgan witnesses, and six UBS witnesses. FHFA has been forced to postpone eleven JPMorgan depositions⁵ and two UBS depositions due to either late production of thousands of documents, or late disclosure to FHFA of the existence of thousands – and often tens of thousands – of additional Witness Documents.⁶ Two additional JPMorgan depositions were postponed due to document deficiencies in JPMorgan's production.⁷ These production and scheduling delays have prevented FHFA from taking meaningful deposition discovery in the JPMorgan action and has also delayed progress in the UBS action. FHFA expects that without a firm completion date, production delays like these will also derail deposition discovery in the *Merrill* and Tranche 3 and 4 Actions, particularly in light of the fact that only Nomura and First Horizon agreed to the initially proposed May 15 deadline.

Accordingly, to ensure that such delays will not continue to threaten the pretrial schedule, FHFA respectfully requests that the Court enter an order requiring all Defendants complete their full document productions and provide final privilege logs by May 31, 2013. FHFA will meet the May 31, 2013 deadline with respect to its own document production and privilege log, with the exception of documents identified in response to certain search terms that relate solely to the Connecticut RBS action, and related privilege log entries. The only documents produced by the parties after May 31, 2013 should be materials that are produced pursuant to the parties' duty to supplement under Federal Rule of Civil Procedure 26(e).

³ As used herein, the term "Witness Documents" has the same definition as set forth in the Amended Deposition Protocol, entered by the Court on February 25, 2013.

⁴ Until April 18, FHFA had noticed depositions only in the *UBS* and *JPMorgan* actions; on April 18, FHFA noticed its first depositions in the *Merrill* action.

⁵ For example, FHFA was forced to postpone the deposition of JPMorgan witness Diane Novak due to: (1) the production of 4,300 documents three days before her first scheduled deposition (on February 19, 2013); and (2) JPMorgan's disclosure on the evening before the rescheduled date (on March 19, 2013) that it identified an additional 5,300 documents that had yet to be reviewed. The other nine depositions (and the agreed-upon dates from which they were postponed) for JPMorgan are: Robinson (February 28), Pattie Sears (March 6-7 and again on April 11-12), Jennifer Schneider Weiss (March 13-14 and again on April 17-18), Raj Kothari (March 4-5), Thomas Lehmann (April 2 and again on April 18), and Donald Wilhelm (April 23). The UBS depositions are: Michael Boyle (February 7-8) and John Lantz (April 10-11).

⁶ In addition, UBS has proposed deposition dates for ten requested deponents outside of the 45 day window mandated by the Deposition Protocol – in some cases weeks after the 45 day limit.

⁷ Those JPMorgan deponents are: David Duzyk and John Mayer. JPMorgan and FHFA agreed to postpone two other depositions for other reasons.

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Respectfully submitted,

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cc: All Counsel of Record